

1815

Proceedings of a Division Court Martial
Constituted for the Trial of Capt. Thomas Eastman,
Battalion of Cavalry, 1st Brigade, 8th Division;
March 14, 1815 with his Defence before the Court,
the Division Order of March 27th, Disapproving
the Judgment of the Court, and an Address to the
Public

Thomas Eastman

William Winslow

James Waugh

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PROCEEDINGS

OF

A DIVISION COURT MARTIAL,

CONSTITUTED FOR THE TRIAL

OF

CAPT. THOMAS EASTMAN,

BATTALION OF CAVALRY, 1ST BRIGADE, 8TH DIVISION ;

MARCH 14, 1815.

WITH HIS

DEFENCE BEFORE THE COURT,

THE

DIVISION ORDER OF 27TH MARCH, DISAPPROVING THE

JUDGMENT OF THE COURT,

AND

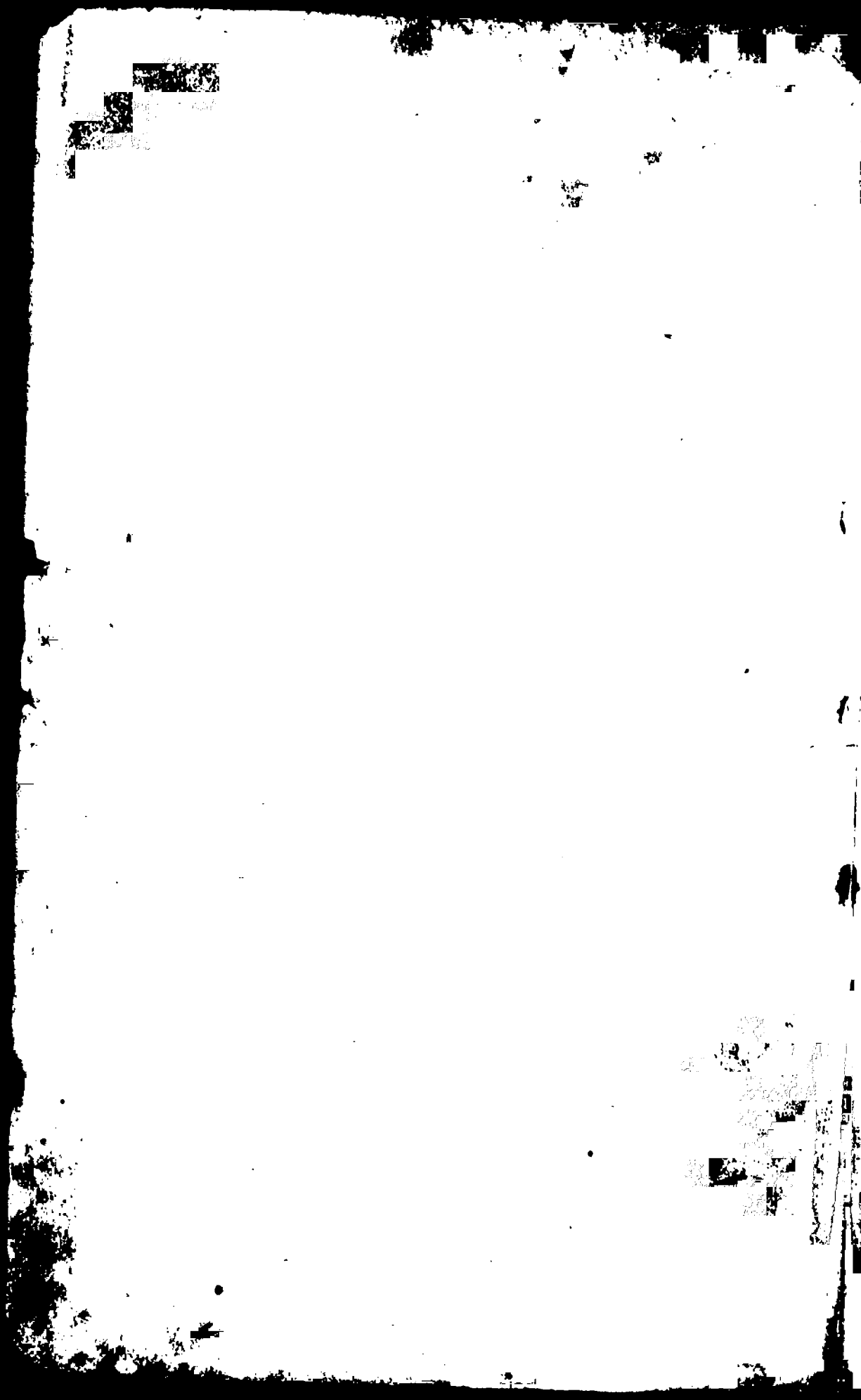
AN ADDRESS TO THE PUBLIC.

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HALLOWELL :

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CAPT. EASTMAN'S TRIAL.

Minutes of the evidence, proceedings and judgment of a Division Court Martial, of which Lieut. Col. Commandant JAMES WAUGH, jun. of the 2d Reg. 2d Brig. is appointed President; (Convened at DILLINGHAM'S Tavern in Augusta, on Tuesday, the 14th day of March, 1815,) for the trial of Capt. THOMAS EASTMAN, of the Battalion of Cavalry in the 1st Brigade, on sundry specifications of charge exhibited against him in the complaint of Lieut. WILLIAM WINSLOW of the same Battalion.

PRESENT—

LIEUT. COL. JAMES WAUGH, JUN. PRESIDENT.

MEMBERS.

Maj. NATHAN STANLEY, 3d Reg. Inf. 2d Brig. 8th Div.

Maj. JOHN HEATH, 3d Reg. Inf. 1st Brig. 8th Div.

Capt. JONAS PARLIN, of Company Battalion Cavalry, 2d Brig. 8th Div.

Capt. RICHARD SMITH, 1st Reg. Inf. 2d Brig. 8th Div.

Capt. JOHN TRASK, 5th Reg. Inf. 1st Brig. 8th Div.

Capt. JACOB DAVIS, 1st Reg. Inf. 1st Brig. 8th Div.

Capt. LEVI BARRETT, 1st Reg. Inf. 2d Brig. 8th Div.

Lieut. THOMAS B. COOLIDGE, Comp'y Light Inf. 1st Reg. 1st Brig. 8th Div.

Lieut. OLIVER RICHARDSON, 1st Reg. Inf. 2d Brig. 8th Div.

Lieut. OLIVER SEWALL, 5th Reg. Inf. 1st Brig. 8th Div.

Lieut. JOHN PAGE, 1st Reg. Inf. 2d Brig. 8th Div.

Lieut. SAMUEL WEBB, 1st Reg. Inf. 2d Brig. 8th Div. Supernumerary.

Supernumeraries not Members of the Court.

Lieut. EZEKIEL GILMAN, of Company Light Inf. 1st Brig. 8 Div.

Lieut. ELEAZER SMITH, Battalion of Artillery, 1st Brig. 8th Div.

Maj. WILLIAMS EMMONS, Judge Advocate, 8th Div. M. M.

Lieut. JESSE JEWETT, Adjutant of the Battalion of Cavalry, 1st Reg. 1st Brig. 8th Div. Marshal.

The President, Members, except one, and Officers ordered upon this Court Martial were present. The Judge Advocate here administered the oath to the President and to each of the members present singly, agreeably to the requirements of the Militia Law of 1810, sect. 31. After which the President administered the oath to the Judge Advocate in conformity to the law aforesaid.

The Judge Advocate here produced and read the following Division Orders, to wit :

DIVISION ORDERS.

Eighth Division, Augusta, February 24, 1815.

A Division Court Martial, of which Lieut. Colonel Commandant JAMES WAUGH, jun. of the 2d Reg. 2d Brig. is appointed President, will convene at Dillingham's Tavern in *Augusta*, on Tuesday the 14th day of *March* next, at ten o'clock, A. M. for the trial of Capt. THOMAS EASTMAN, of the Battalion of Cavalry in the 1st Brigade, on sundry specifications of charges exhibited against him in the complaint of Lieut. WILLIAM WINSLOW of the same Battalion. The members of the Court will be taken by regular detail as follows, viz. From the 1st Brigade, excepting the Battalion of Cavalry, 1 Major, 3 Captains, 2 Subalterns, and 2 Subalterns supernumerary—From the 2d Brigade, including the Cavalry and Artillery, 1 Major, 3 Captains, 2 Subalterns, and 1 Subaltern supernumerary. Adjutant JESSE JEWETT of the Battalion of Cavalry, 1st Brig. will act as Marshal of the Court. The Adjutants of the several Regiments and Corps will be responsible for the due notification of the Captains and Subalterns required from them respectively, pursuant to these Orders, and will return their names to the Judge Advocate before the sitting of the Court. The Brigade Majors will do the same respecting the Field Officers required, and under the same responsibility. Major Grant will cause the accused Officer to be put in arrest by being served with a copy of the complaint aforementioned, and of these Orders, ten days at least previous to the sitting of the Court.

*By Order of Major General SEWALL,
EBEN DUTCH, A. D. C. & Orderly Officer.*

The Judge Advocate then produced and read the following complaint—

To HENRY SEWALL, Esquire, Major-General of the eighth Division of the Militia of Massachusetts.

WILLIAM WINSLOW, Lieutenant in a company of Cavalry in the first Brigade eighth Division would beg leave to complain of THOMAS EASTMAN Captain and Commandant of said Company of Cavalry, for unmilitary conduct of which your Complainant alleges the said Eastman has been guilty, in several instances, as exhibited in the following specifications, viz :—

Specification 1st. For that the said Eastman at Boston, to wit, Winthrop, on the twenty sixth day of November last past, did make and exhibit to the Board of War within and for the State of

Massachusetts a certain false and fraudulent pay roll of his said Company, wherein and whereby, he charged the said State with the wages, rations, and clothing of one Thomas Eastman, Jun. who said Eastman falsely and dishonorably represented to said Board of War, was servant to himself for and during the term of fifty seven days, while he the said Eastman was on duty by virtue of Division Orders of the eleventh of September last past; and the said Eastman did actually receive of the Paymaster to said Board of War the sum of twenty nine dollars and thirty five cents in payment of the wages, rations, and clothing of the said Thomas Eastman, Jun. when the said Eastman did not employ the said Thomas as a servant as aforesaid.

Specification 2d. For that the said Eastman at Boston, to wit, Winthrop, on the twenty sixth day of November last past, did make and exhibit to the said Board of War, a certain false and fraudulent pay roll of his said Company, wherein and whereby, he charged the said State with the wages, rations, and clothing of one Samuel Thwing, who said Eastman falsely and dishonorably represented to said Board of War, was a servant to Lieut. FRANCIS NORRIS, for and during the time of thirty days, while the said Norris was on duty by virtue of Division Orders of the eleventh of September last past; and the said Eastman did actually receive of the Paymaster of said Board of War, the sum of fourteen dollars and fifty cents in payment of the wages, rations and clothing of the said Thwing, when the said Eastman well knew that the said Thwing was not employed as a servant to said Norris.

Specification 3d. For that the said Eastman, being authorised by his said Company to receive of the Paymaster of said Board of War, the amount due from said State to said Company for their services rendered in obedience to Division Orders of the eleventh of September last past, did at Boston, to wit, at Winthrop, on the twenty eighth day of November last past, obtain and receive of Daniel Sargeant, Esquire, Paymaster as aforesaid, fifteen hundred dollars in bills of the Worcester Bank, which were at the time current and in full value, for his said Company, and which belonged to them as aforesaid; which said bills the said Eastman afterwards exchanged for specie, without the authority and contrary to the interest of the said Company; part of which specie the said Eastman fraudulently and dishonorably took and employed to purchase bills of certain Eastern Banks (which bills at the time of the purchase in the vicinity of said Banks, and of the residence of the members of said Company, were uncurrent and of a depreciated value) at a discount of nine and ten per cent.; thereby depriving his said Company of the full value and benefit of the money received of said Paymaster, and belonging to said Company as aforesaid.

Specification 4th. For that the said Eastman at Hallowell, on the twelfth day of December last past, did fraudulently and dishonorably pay to members of his said Company their portion of the money

which the said Eastman received of the Paymaster of said Board of War, and belonging to them as aforesaid, in specie at a discount of one and an half per cent. or in the uncurrent and depreciated bills of certain Eastern Banks, thereby defrauding numbers of his said Company of a certain part of the amount of their demand against the said State for their services as aforesaid; all which is contrary to the laws of this Commonwealth, highly unbecoming an officer, oppressive to those under his command, and injurious to the interest of the Militia.—Wherefore your complainant prays the Major General that the said Eastman may be arrested and held to answer to the foregoing specifications of charge as to law and justice may appertain.

(Signed)

WILLIAM WINSLOW, 2d Lieut.

February 18th, 1815.

The Judge Advocate then demanded of the defendant, whether he were guilty or not guilty of the several specifications of charge contained in the complaint of Lieutenant William Winslow, which had just been read to him.

The defendant then moved for permission to have counsel, which was readily granted;* and then submitted to the Court the following request, to wit:

The defendant requests a delay of the proceedings of this Court until tomorrow, that he may have an opportunity to plead specially to some of the charges exhibited against him; and that he may also have an opportunity to challenge any member of the Court he may think proper.

Whereupon the President directed the Marshal to clear the room, and the Court, after taking said request into full consideration, were unanimously of opinion that the same ought to be granted.

The doors were then opened, the parties called and answered.—The President accordingly ordered the Marshal to adjourn this Court to meet again at this place tomorrow, at nine o'clock, A. M. which he did in due form.

Dillingham's Tavern, Wednesday Morning, 9 o'clock, A. M.

Met pursuant to adjournment. The President and Members of the Court on being called, answered in their proper places. The parties were called and answered in their proper persons. The Judge Advocate then, after the Court had been opened in due form by the Marshal, and reading the proceedings of yesterday, demanded of the defendant whether he were guilty or not guilty of the several specifications of charge; when he answered that as to the first specification of charge, thereof he was not guilty. That as to the second specification of charge, thereof he was not guilty. The de-

* H. W. FULLER, Esq. was counsel for the defendant.

defendant then offered the following objection to being held to answer to the third specification of charge, to wit : The defendant denying the truth of the charges set forth in the third specification of charge, says he ought not to be held to answer thereto before this Honorable Court, because he says that in all transactions in his private capacity, not connected with his official duty, he is amenable to the civil authority only ; and that no military tribunal can have any cognizance of charges in no way connected with his official duty. He prays this Honorable Court whether he shall be bound further to answer to said third specification. As to the fourth specification of charge, the defendant says that containing charges similar in their nature to the third specification, and denying the truth thereof, he prays the opinion of this Honorable Court, whether he shall be bound further to answer thereto.

Here the Judge Advocate inquired both of the defendant and complainant, if they had any objection or challenge to make to any one intended to be a Member of the Court ; to which both replied in the negative.

The Court now proceeded to hear the evidence in relation to the first charge ; when the Judge Advocate produced a certified copy of the pay roll made and exhibited by Capt. Eastman of his Company to the Board of War ; by which it appeared that Capt. Eastman had charged the State with the wages, rations and clothing of one Thomas Eastman, Jun. for and during the term of fifty seven days, as his servant ; and by which it appeared that he received the sum of twenty nine dollars and thirty five cents on account of the wages, rations and clothing of said Thomas Eastman, Jun. The defendant also acknowledged in open Court, the receipt of the money aforesaid.

The Judge Advocate now called Benjamin Paine, who being sworn, was interrogated and answered as follows :

Question, by Judge Advocate. Are you a member of Capt. Eastman's Company ?

Answer. I am.

Q. by same. Did you perform military duty in his Company by virtue of Division Orders of the eleventh of September last past, during the whole time the Company did duty ?

A. I did pretty much all the time.

Q. by same. Did you board at the same house with Capt. Eastman when on duty at this time ?

A. Yes, sir, I did.

Q. by same. Do you or do you not, know, if Capt. Eastman employed his son Thomas Eastman, Jun. as a waiter, and had him with himself when you were present ?

A. He was down at Capt. Eastman's quarters several times, and brought him clothes.

Q. by same. Did Thomas Eastman, Jun. board with you and keep at his father's quarters all the time, or any of the time when you were present ?

A. He did not all the time, if I recollect right ; he staid there one or two nights while I was there ; the last ten days I went down east.

Q. by same. Did Thomas Eastman, Jun. act as servant to his father and appear to wait upon him while he was there ?

A. I did not know any thing of it at that time, if he did.

Q. by same. Did Capt. Eastman have any person to take care of his horse, and to do errands for him, beside his son ?

A. Mr. Otis Getchell used to take care of Capt. Eastman's horse generally. I took care of him myself sometimes ; there used to be several of us who took care of the horses.

Q. by same. How long a time in the whole should you say Thomas Eastman, Jun. was with his father while on duty at the time referred to ?

A. I do not recollect of seeing him at his father's quarters more than four or five times, and he used generally to return the same day.

Q. by same. Did Capt. Eastman keep two horses while you were present at his quarters ?

A. I believe not.

Q. by defendant. Were you knowing to Capt. Eastman's other sons' being down at his father's quarters repeatedly, and doing business and errands for him ?

A. I was not.

Q. by same. Were you knowing to Capt. Eastman's paying Otis Getchell for his services ?

The witness began to state that he heard Getchell say—when the Judge Advocate stopped him, saying, that hear-say evidence was not admissible.

Q. by same. Has not Otis Getchell left the country, so that his evidence cannot be had at this Court ?

A. I understand he has ; I have been informed by several that he left it, and I have not seen him since the company was paid.

The defendant here offered the following application to the Court, to wit. The defendant prays the opinion of this Honorable Court, whether he shall not be allowed to examine the witness relative to what he heard Otis Getchell say, as said Getchell has left the country.

Thereupon the President directed the Marshal to clear the room ; after which the Court taking the prayer of the defendant into mature consideration, were unanimously of opinion that the same ought not to be, and should not be granted. The doors were now opened and the parties were called and answered. The Judge Advocate read the opinion of the Court.

Q. by the Court. Where were Capt. Eastman's quarters at the time you state his son visited him four or five times and returned the same day ?

A. Part of the time we quartered at Mr. Dillingham's, and part of the time at Mr. Thwing's, in Augusta.

Q. by defendant. What is the distance from my house to Mr. Dillingham's or Mr. Thwing's ?

A. I should think it was between six and seven miles.

Q. by the Court. Did you take care of Capt. Eastman's horse by his order, or of your own free will ?

A. It was of my own free will. I had care of the stable to see that all the horses were taken care of, while I was out.

Q. by J. A. Did any one have any care of Capt. Eastman's horse, or do any thing with him except yourself ?

A. Yes, sir, Mr. Getchell *used* to take care of him.

The Judge Advocate here introduced Parsons Smith, who after being sworn, was interrogated and answered as follows :

Q. by J. A. Are you a member of Capt. Eastman's Company ?

A. Yes, sir.

Q. by same. Did you perform duty under him by virtue of Division Orders of the eleventh of September last ?

A. Yes, sir.

Q. by same. Did you put up at his quarters all the time he was out on duty by virtue of said orders ?

A. I did, when doing duty myself.

Q. by same. What part of the time were you absent ?

A. I went to Wiscasset three times ; and I was absent about three weeks of the time while I was on duty, which I think was better than forty days ; I used sometimes to go home nights and return in the morning. I had a substitute about a week.

Q. by same. Did Capt. Eastman have his son Thomas Eastman, Jun. with him as a waiter, while you were present with him at his quarters when on duty by virtue of Division Orders of the eleventh of September last ?

A. Not as I know of. His son came there three or four times while I was there ; as to his being a waiter, I do not know.

Q. by same. Who took care of Capt. Eastman's horse and did his servile business and his errands, while you were present ?

A. Mr. Otis Getchell was the person who took care of his horse, and did the errands for him generally, sometimes I did errands for him myself.

Q. by same. Did Thomas Eastman, Jun. board with you at his father's quarters while you were present ?

A. He stay'd there three nights, he went to Palermo after some sheep, and on his return he stay'd there with his brother.

Q. by same. How do you know, he went to Palermo after sheep ?

A. I do not know he went there after sheep, but I saw him in company with his brother at Augusta with sheep.

Q. by the Court. Are you well acquainted with Capt. Eastman's family, so that you should know his sons ?

A. I am. Those as large as Thomas I should know, the smaller ones, I should not, if I should see them, as I know of. I do not know but I might.

The Defendant as to the fourth specification of charge, *says thereof he is not guilty.*

The Judge Advocate here produced and read the certificate of Daniel Sargent, Esq. one of the Commissioners of the Board of War, and also Paymaster to the same, which was as follows :

COMMONWEALTH OF MASSACHUSETTS.

Office of the Board of War, Boston, Feb. 2d, 1815.

I hereby certify, that upon an examination of the books, papers and minutes in the Paymaster's Department of this Board, it appears that there was paid at this Office, to Capt. Thomas Eastman, Captain of Cavalry, on the 28th of November last, seventeen hundred and ninety two dollars and forty eight cents, for pay roll of a company of Cavalry in Major Grant's Squadron, Gould's Brigade, Sewall's Division, under General Orders of the 11th Sept. 1814, including rations, clothing, &c. also medical attendance on two sick soldiers, allowance for room, stationary, &c. but excluding \$53 88 and 8 75, making \$62 63 then due to Lieut. William Winslow, which was not paid at that time for want of an order to receive it ; and the sum of \$1792 48 was paid in the bills, check, and change hereafter mentioned, viz.

\$128 00	in Newburyport Bank Bills,
1500 00	in Worcester Bank Bills,
164 46	in a check on Boston Bank,
02	change.

\$1792 48

DANIEL SARGENT, *Paymaster, & one of the Commissioners of the Board of War.*

The Judge Advocate then offered to read the deposition of Ralph Huntington, Esq. when the Defendant offered to the Court the following objection, to wit :

The Defendant objects to the admission of the deposition offered by the Judge Advocate, and assigns the following reasons for his objection :

1st. The rules of evidence are similar in military and criminal cases ; and no custom or usage in this Commonwealth allows the admission of depositions in criminal cases.

2d. The Defendant was not notified of the taking of said deposition.

3d. The Defendant contends, that there is no law or usage in this Commonwealth which would authorise the admission of a deposition in trial before Courts Martial, unless the Defendant was particularly notified of the time and place of taking of said deposition.

4th. At the time of taking said deposition, the Defendant was in Boston, and might have been present at the taking thereof had he been notified.

The Defendant begs leave to refer the Court to certain authorities in support of his objection. Maltby, in his introduction to his

Treatise on Courts Martial, observes, "The militia man is deeply interested in all its details, being liable to the same pains and penalties, and to the same rules and regulations by the Articles of War, as the individual of the regular army." The 74th article of the Rules and Articles of War expressly provides, that in the trial of cases not capital, the deposition of witnesses not in the line or staff of the army, may be taken before some Justice of the Peace, and read in evidence, provided the prosecutor and person accused are present at the taking or are duly notified thereof. Maltby, in his Treatise on Courts Martial (page 41) says, the rules and doctrine of evidence, as admitted by law in all criminal cases, are adhered to in nearly the same manner upon trials at naval and military Courts Martial; also in Hawkin's pleas of the Crown (vol. ii. p. 49.) also Gen. Hull's trial.

The President directed the Marshal to clear the room; and the Court proceeded to consider the objection of the defendant, and after having taken the same into mature deliberation, were of opinion that the deposition ought not to be admitted.

The doors were now opened. The parties were called and answered. The President directed the Marshal to adjourn the Court till nine o'clock tomorrow, which he did accordingly, in due form.

—•—

Dillingham's Tavern, Thursday Morning, 9 o'clock.

Met pursuant to adjournment. The President and Members of the Court, on being called, answered in their places. The parties were called, and answered in their proper persons. The President then directed the Marshal to open the Court, which he did in due form. The Judge Advocate then read the minutes of yesterday.

The Judge Advocate here called Alvan Hayward, who being sworn, was interrogated and answered as follows :

Q. by J. A. Are you a member of Capt. Eastman's Company ?

A. I am, sir.

Q. by same. Were you present at the meeting of the Company called by Capt. Eastman, to pay them the money he received for them of the Board of War ?

A. I was.

Q. by same. Do you recollect what Capt. Eastman stated to the Company as to the money he received of the board of War ?

A. I think I do. He stated he received part of the money in Northampton bills, and that he exchanged those bills for specie at one and an half per cent. discount; and this he did, because he thought his company would prefer to have the specie at the discount of one and an half per cent. rather than the bills.

Q. by same. What money did Capt. Eastman pay you ?

A. He paid me one half in specie at one and an half per cent. discount; and the other half in bills which I think were Wiscasset and Kennebec.

Q. by same. Do you recollect of hearing Capt. Eastman say, that he could let the Company have all specie, if they wished it, at that discount?

A. I do so; at first he said so, then he said that his money would not hold out to pay in specie.

Q. by same. What reply did the Company, or members of the Company make, when he proposed to pay all specie?

A. I recollect of hearing some of the Company say, they would have all specie and allow two per cent.

Q. by same. Were the Wiscasset and Kennebec bills which you had of Capt. Eastman as good to you as would have been Worcester or Newburyport or Boston bills?

A. They answered for me the same.

Q. by same. Were the Wiscasset and Kennebec bills, as good as the Western bills named?

A. As to that, I cannot say; but they answered for me as well to pay away.

Q. by same. Why did you take part specie and allow one and an half per cent. if the bills which Capt. Eastman paid you, were as good?

A. I should have preferred the specie at the discount, but the bills answered the same purpose to me to pass away. I passed them without any discount.

Q. by same. Were not the Kennebec and Wiscasset bills sold at a discount, at this time?

A. I do not know; I had heard they were; I had not taken any below par, nor sold any at a discount.

Q. by defendant. Were you, and were the Company well satisfied with the money you received?

A. I was satisfied with the money I received.

Q. by same. If the choice had been offered you to have received your pay in Worcester or Kennebec bills, which should you preferred?

A. I think I should have preferred the Kennebec bills for this reason; that I was not so well acquainted with the Worcester bills as with the Kennebec; I should then have chosen the Kennebec bills.

Q. by same. Did not I state to the Company that I received the pay for the Company in western bills, part I thought were Northampton, and that I thought it necessary to exchange them, and that I got them exchanged at half per cent. discount, and that the next day after I got them exchanged, they asked me one and an half per cent. discount?

A. I think you stated that to the Company.

Q. by same. Did not I state to the Company that I would pay them the amount due them in Kennebec, or Lincoln, or Bath, or Wiscasset bills, at par, if they preferred them, or would pay the half in specie at one and an half per cent. discount?

A. You did.

Q. by same. Did I receive from the Company any compensation for my services and trouble in receiving and paying over money to them ?

A. You did not ; that I was knowing to.

Q. by same. Did not I give as one reason for exchanging the bills I received, that they were chiefly in twenty dollar bills ?

A. You did.

Q. by the Court. Did you make any objection whatsoever, at the time, as to the manner, in which Capt. Eastman proposed to pay you ?

A. I did not.

Q. by same. Did Capt. Eastman make any deduction from what was due you on the pay roll, for his trouble in procuring the money ?

A. He did not, except the one and an half per cent. on the specie.

Q. by same. Did the Company make any objection at the time, as to the manner of paying them ?

A. I did not hear them at the time, but Mr. Belcher in going home, stated to me some things he did not like in the paying of the Company.

The Judge Advocate here called Parsons Smith, who was interrogated and answered as follows :

Q. by J. A. Were you present at the time Capt. Eastman paid his Company the money he obtained for them from the Board of War ?

A. I was.

Q. by same. What statement did he make, at that time, respecting the money he received of the Board of War ?

A. He stated that he had got our money for us ; and he was paid off in western bills ; that they were principally on Northampton Bank, a few on Newburyport ; that he had exchanged part of them for specie at one and an half per cent. discount, and that the remainder he had exchanged for eastern bills ; the Northampton Bank he did not know about, as Banks were failing so fast, he thought that bills of Banks nearer by would be better for them.

Q. by same. What money did Capt. Eastman pay his Company ?

A. He paid them one half in specie at one and an half per cent. discount, and the rest, some in Kennebec, some in Wiscasset, and some in Bath, but principally I think in Kennebec.

Q. by same. Did Capt. Eastman propose to pay all specie ?

A. I do not recollect that he did ; some of the members said that they would have all specie, but he stated that he should not be able to pay more than half.

Q. by same. Did you hear any of the Company at the time express dissatisfaction at the money they received of Capt. Eastman ?

A. I did not.

Q. by same. Do you know any thing relative to the discount of the Kennebec, Wiscasset and Bath bills, at the time Capt. Eastman paid the Company ?

A. I do not.

Q. by defendant. If the choice had been offered you to have received your pay in Worcester or Kennebec bills, which should you have preferred ?

A. I think I should have preferred Worcester.

Q. by same. Why should you have preferred Worcester bills to Kennebec at that time ?

A. Because I conceived them better, about equal to specie, and had never heard the Worcester Bank had stopped payment; but the Kennebec had, as I was informed.

Q. by the Court. Did you give Capt. Eastman any thing for his trouble in getting the money and making the payment ?

A. I did not.

Q. by same. Did you hear Capt. Eastman state that he gave half per cent. to get the specie for the bills he received, and that the next day they asked one and an half per cent. for the specie ?

A. I do not recollect; I went out and in four or five times to get the Company into the room.

Q. by same. Were you present all the time Capt. Eastman was stating to the Company as to the money he obtained of the Board of War, and all that related to that subject ?

A. I cannot say positively that I was.

Q. by same. Did Capt. Eastman call his Company together to receive their pay by an official order ?

A. He did.

The Judge Advocate then called Theo. Hamlen, Esq. who after being sworn, was interrogated and answered as follows :

Q. by J. A. Do you not know, what the Kennebec, Wiscasset and Bath bills were sold for in market, at or about the twelfth of December last past ?

A. I saw some of those bills sold in my house about that time at a discount; I do not know at what discount; I myself took them at par at that time and a little after.

Q. by same. Had these Banks refused to pay specie ?

A. I understood they had.

Q. by same. Do you know nothing more respecting the depreciation of these bills ?

A. They were depreciated from the time specie was refused in payment, but were generally taken by me till about the middle of December.

Q. by same. Did you consider any of these bills as good as Worcester bills or Newburyport, at the twelfth of December ?

A. No, sir, I should not.

Q. by same. Would not the Worcester bills have been worth a little premium at the time, if they had been given in exchange for the aforesaid eastern bills ?

A. I have no doubt they would; but I cannot say how much.

Q. by defendant. Were not the bills of the Augusta Bank worth as much or more here the twelfth of December than bills of the Worcester Bank ?

A. I should esteem them about the same value, some might esteem the bills of the Augusta Bank as more valuable, others those of the Worcester Bank.

Q. by the Court. If any person had owed you the twelfth of December, and had brought you bills of the Kennebec Bank to pay the debt, should you not have taken them at par and cancelled the debt?

A. Some debts I should; but some I should not.

The Judge Advocate then introduced William B. Johnson, who after being sworn, was interrogated and answered as follows:

Q. by J. A. Did you purchase bills of the Kennebec Bank, or Wiscasset Bank, or Bath Bank, at a discount about the twelfth day of December last?

A. Yes, Sir.

Q. by same. How many of the bills did you purchase, and at what discount?

A. I cannot tell what amount; I bought them for specie at from five to fifteen per cent. discount, about that time.

Q. by same. Should you have not valued the Worcester bills higher than the eastern bills just mentioned?

A. I should.

Q. by same. Would you not have given a premium for them in exchange for those eastern bills?

A. I might a small premium.

Q. by defendant. What amount, if any, of Kennebec bills did you purchase at a discount for specie?

A. I recollect at one time, I bought of the Kennebec bills about thirty dollars of a man in Newhampshire, at a discount of fifteen per cent.

Q. by same. Did you not purchase the thirty dollars of Kennebec bills you before mentioned, some time after the twelfth of December?

A. I think it was, how long I cannot tell.

Q. by same. Did not you purchase some bills of the Waterville and Augusta Banks about the twelfth of December, at a discount for specie?

A. I believe I did, when it was not Bank hours.

Q. by same. Did you not pass Kennebec bills at par when you received them, and did you not exchange Kennebec bills at the Bank for western bills about the twelfth of December?

A. About this time I think I sent to the Bank and sometimes I obtained western bills and sometimes I did not; in respect to passing the Kennebec bills at par, I could not pass them always; some would take them and some would not.

The Commonwealth here finished the evidence on their part.

The President directed the Marshal to adjourn the Court, to meet again at half after two at this place, which he did in due form.

The Court met pursuant to adjournment. The Court were called and answered in their proper places. The parties were called and answered. The President directed the Marshal to open the Court, which he did in due form.

The Defendant now introduced Thomas Eastman, Jun. who after being sworn, was interrogated and answered as follows :

Q. by defendant. When your father was ordered on duty last fall with his Company, did he direct you to be at all times in readiness, as you would go with him, if he was ordered from Augusta ?

A. Yes, sir.

Q. by same. While your father was at Augusta on duty was you frequently employed in bringing things from Winthrop, and in carrying them from Augusta to Winthrop for him ?

A. Yes, sir.

Q. by same. Did not your father provide a horse for you and direct you to take particular care of him ?

A. Yes, sir.

Q. by same. Was you in the employ of any other person than your father while he was on duty last fall ?

A. No, sir, I was not.

Q. by J. A. Did you not remain at home and attend to your usual business, the whole time your father was on duty last fall, excepting when you brought and carried clothes for him ?

A. I kept at home, but was not about any thing except some business to be done in the family.

Q. by same. Did you go to Palermo with your brother after some sheep while your father was on duty last fall ?

A. I went to Palermo after sheep, I think a day or two before my father was discharged.

Q. by same. Did you go to Vassalborough for cloth for your father while he was on duty at Augusta ?

A. Yes, sir.

Q. by same. How often did you come to Augusta and how long did you stay, when your father was here on duty ?

A. I was down I should think, seven or eight times when I went back the same night, and staid three days at one time.

Q. by same. What time did you come down and how long did you stay, when you returned the same night ?

A. I came down in the morning and stay'd till night.

Q. by same. What did you do for your father, when you stay'd at Augusta, and where did you board ?

A. I boarded at Mr. Thwing's, and used to do my father's waiting ; I got up his horse sometimes.

Q. by defendant. Did your brothers sometimes come from Winthrop to Augusta and bring things to your father while he was on duty there ?

A. Yes, sir.

Q. by same. If your father had been ordered away from Augusta, did you not expect to go with him ?

A. I expected to have gone with him.

Q. by J. A. What made you expect to have gone with him ?

A. He told me, if he marched his troops any where, I should have to go with him.

Q. by same. Did you board at Mr. Dillingham's, when your father put up there, when on duty ?

A. I did not.

The Defendant here offered to introduce Lieut. Norris, who had been previously sworn. The Judge Advocate objected, that he ought not to be admitted as a witness, he being interested in the event of the prosecution.

The President ordered the Marshal to clear the room. The Court after taking the same into consideration, were of opinion that the witness ought to be admitted as to the first specification of charge. The doors were opened and the parties called and answered.

Q. by defendant. (To Lt. Norris.) Did you frequently see Thomas Eastman, Jun. at his father's quarters while he was at Augusta ?

A. I saw him there several times.

Q. by same. Did Capt. Eastman's other sons frequently come to Augusta and bring things to him ?

A. I saw his younger son, I believe his name was Asa, down once or twice, and likewise Edward, two or three times. I do not know what Edward came for ; I understood the others came to bring some clothing.

Q. by J. A. Did Capt. Eastman employ his son Thomas Eastman, Jun. or any one else as his waiter at the time referred to ?

A. I know he acted as a waiter.

Q. by same. Was Thomas Eastman, Jun. with his father all the time, and did he board at the same place with him ?

A. He was not all the time with his father, but a short time.

Q. by same. Did Capt. Eastman employ one Otis Getchell as his servant ?

A. Not to my knowledge. Getchell attended considerably upon the Captain.

Q. by same. Did not Getchell go to Wiscasset for Capt. Eastman in the character of a servant ?

A. I cannot say whether he went or did not.

Q. by defendant. Did not Capt. Eastman tell you that you must not employ any of the soldiers as waiters, without paying them for it ?

A. He did.

The defendant here introduced Maj. Joseph Chandler, who after being sworn, was interrogated and answered as follows :

Q. by defendant. Have you ever been an officer in the United States' army ?

A. I have, sir.

Q. by same. Was it customary for officers in the United States' service to have their servants with them at all times ?

A. I did not consider it necessary myself that a servant should be with the person of the officer continually ; but I did consider that if my servant was with my family, it was sufficient. If I directed him to be with my family, he was to be there ; and if I had moved from one post to another, I had a right to leave him with my effects.

Q. by same. Were not the servants of officers frequently employed by them about other business than waiting upon them at their quarters ?

A. Yes.

The defendant here introduced Lieut. Norris as to the second specification, the complainant having consented to waive any objection he might have as to the competency of said Norris as a witness on this point.

Q. by defendant. Did you employ Samuel Thwing as a servant while you was on duty at Augusta ?

A. I did, sir.

Q. by same. Did you pay said Thwing's father for the services said Samuel Thwing did for you while on duty ? †

A. I did, sir.

Q. by same. Did you receive of Capt Eastman the pay he received for your said servant of the government ? ‡

A. I have no doubt of it.

Q. by J. A. How long did you employ said Thwing as your servant ?

A. I employed him thirty days.

Q. by same. How much did you pay said Thwing's father for his son's services ?

A. I paid to Mr. Thwing for his son's services, six dollars and twenty five cents.

† Here the following receipts were produced ; which, although considered important by the Court, do not, by some *omission* unaccountable, consistent with the duty enjoined by his oath of office, appear on the record as certified by the Judge Advocate. Young Thwing and his father were both in Court ready to testify, if called upon, to the genuineness of the receipt, signed by Thwing. The other receipt is signed by Norris, the witness then on the stand.

AUGUSTA, November 6, 1814. Received of Francis Norris, Lieut. of the Cavalry under the command of Thomas Eastman, Captain of the Cavalry 1st Brig. 8th Div. for my son Samuel Thwing, as a servant under said Norris, for one month attendance, the sum of six dollars and twenty five cents, it being in full compensation for my son's services—as witness my hand.
(Signed) NATH'L. THWING.

‡ The following receipt shows that Eastman was not benefited by Norris' servant :

WINTHROP, Dec. 9th, 1814.
Received of Thomas Eastman, one hundred and six dollars and two cents, it being in full for my services while on duty, and servant.
(Signed) FRANCIS NORRIS.

Q. by same. Did you employ said Thwing as your servant when you boarded at Mr. Dillingham's?

A. I did.

Q. by same. What did Thwing do for you when you were at Dillingham's, and where did he board?

A. He boarded at his father's, and used to get up my horse and put him out again; but I had no great occasion for my horse in my then situation; and used to black my boots.

Q. by defendant. Did you occasionally employ other persons to bring you clothes and do errands for you?

A. I did, sir.

Q. by same. Was Mr. Thwing satisfied with the amount you paid him for his son's services?

A. He was, perfectly, according to his own expression.

The President now directed the Marshal to adjourn the Court, to meet again at this place tomorrow at nine o'clock, which the Marshal did in due form.

—•—

Dillingham's Tavern, Friday Morning, 9 o'clock, A. M.

Met pursuant to adjournment. The President and Members of the Court were called and answered in their places. The parties were called and answered in their proper persons. The President directed the Marshal to open the Court, which he did in due form. The Judge Advocate then read the minutes of yesterday.

The defendant now called Lieut. Norris, who was interrogated and answered as follows:

Q. by defendant. Did you consider Otis Getchell as a servant to Capt. Eastman?

A. I did not.

Q. by same. Was not Otis Getchell frequently and repeatedly on duty, and was he not ordered to the eastward on a tour of duty, and absent at that time eight or ten days?

A. He was.

Q. by J. A. Did not Otis Getchell attend upon Capt. Eastman when he was sick at Mr. Thwing's?

A. I presume he did; he went down there several times.

Q. by defendant. How long was Capt. Eastman sick?

A. I cannot recollect precisely; it strikes me from three to four days; I do not know but what longer.

Q. by same. Was it not necessary that Capt. Eastman should have a soldier with him to communicate orders to you?

A. Undoubtedly so.

Q. by same. Did not Capt. Eastman frequently, while sick, communicate his orders to you by said Getchell?

A. He did.

Q. by J. A. Was not the orderly officer of Capt. Eastman's Company the proper person to communicate his orders?

A. I cannot say as to that.

Q. by same. Who kept the orderly books, in the absence of Mr. Smith; and were the orders that Capt. Eastman communicated to you by Getchell such as related to his official duty only?

A. I believe I kept pretty much all the records in the absence of Smith, and that the orders Capt. Eastman communicated to me, related wholly to his official duty.

Q. by the Court. Was Capt. Eastman's son Thomas Eastman, Jun. with his father when he was sick?

A. He was not there to my knowledge, as I could not be there to see.

Q. by same. Was Capt. Eastman so unwell during his sickness as to give up the command to you as the next officer?

A. He never mentioned to me that he gave up the command; I considered him the commanding officer.

Q. by J. A. Were you not frequently with Capt. Eastman when he was sick?

A. I think I was down there twice.

The Defendant now called Parsons Smith, who was interrogated and answered as follows:

Q. by defendant. Were you the orderly officer of Capt. Eastman's Company?

A. Yes, sir.

Q. by same. Were you not at home every evening and night Capt. Eastman was sick?

A. I was, sir.

Benjamin Paine was here examined on the part of the Defendant, and answered as follows:

Q. by defendant. Did not Capt. Eastman state to the Company that he received their pay in western bills, part of them he thought were Northampton bills, and that he found it necessary to exchange them, and that he got part of them exchanged at half per cent. discount, and the next day they asked him one and an half per cent. discount?

A. He did.

Q. by same. Did Capt. Eastman give it as one reason for exchanging the bills, that they were principally twenty dollar bills?

A. I think he did.

Q. by same. Did not Capt. Eastman state to the Company that he would pay them the amount due them in Kennebec or Bath, or Lincoln or Wiscasset bills at par, if they preferred them, or he would pay the half in specie at one and an half per cent. discount, and the other half in bills?

A. Yes, sir.

James Robinson, jun. was here examined after having been sworn, on the part of the Defendant, and answered as follows:

Q. by defendant. Did you, at the time Capt. Eastman paid his Company, hear any one of the Company express any dissatisfaction?

A. No, I did not.

George Reed, jun. after having been sworn, was here examined on the part of the Defendant, and answered as follows :

Q. by defendant. Did you at the time Capt. Eastman paid his Company, hear any one of the Company express any dissatisfaction ?

A. I did not.

Q. by same. If you had had your choice to have received your pay in Kennebec bills, or Worcester, which should you have preferred ?

A. Kennebec bills.

Q. by J. A. Did you not carry the money that you received of Capt. Eastman as your pay, to Thomas W. Smith to discharge a debt, and did he not object to taking it ?

A. He did not.

Abishai M. Shaw, after having been sworn, was examined on the part of the Defendant, and answered as follows :

Q. by defendant. Did you at the time Capt. Eastman paid his Company, hear any one of the Company express any dissatisfaction ?

A. I did not.

Q. by same. If you had had your choice to have received your pay in Kennebec or Worcester bills, which would you have preferred ?

A. I do not know I should have had any choice.

William Marshall, Lieut. Francis Norris, James Huings, James Robinson, 2d. Benjamin Paine, Benjamin Philbrook, Joseph H. Perkins, Henry D. Morrill, Oran Shaw and Francis Day, having been previously sworn, were severally asked by the Defendant the following question :

Q. by defendant. If you had had your choice to have received your pay in Kennebec or Worcester bills, which would you have preferred ?

To this question, put individually, each one answered that he should have preferred the Kennebec bills. Mr. Philbrook said he would have given five per cent. premium. Mr. Day, that he should have preferred them by a small per cent. not quite five. Mr. Morrill said that being most acquainted with Kennebec bills, he should have preferred them.

The President now directed the Marshal to adjourn the Court, to meet again at this place at half past two ; which he did in due form.

Friday, half past 2, P. M.

Met pursuant to adjournment. The President and Members of the Court being called, answered in their proper places. The parties were called and answered in their proper persons. The President directed the Marshal to open the Court, which he did in due form.

John Davis, Esq. [Clerk of the Courts] who being sworn, was here examined on the part of the Defendant, and answered as follows :

Q. by defendant. Were the Kennebec bills about the twelfth of December last, generally received at par in the town of Augusta ?

A. So far as my knowledge extends, I should say that the bills were good, and that I never took them at any discount, and that I never paid them away at any, and that I never had any doubt of the solvency of the Bank.

Q. by same. What, if any, was considered the difference in value between Kennebec and Worcester bills at Augusta about the twelfth of December last?

A. So far as respects myself, I should have preferred the Kennebec bills to the Worcester bills. I knew nothing of the particular situation of the Worcester Bank; and that the Kennebec Bank being in the neighborhood, I was well acquainted with its situation.

[Mr. Davis further stated, although it does not appear on the record, that he took the Kennebec bills at the December term of the Court.]

Ebenezer White [Merchant of Hallowell] after having been sworn, was here examined on the part of the defendant, and answered as follows:

Q. by defendant. Were the bills of the Kennebec Bank generally current in the town of Hallowell, on or about the twelfth of December last?

A. I can answer for myself, that I had equally as lief have the Kennebec bills as any that were in circulation in December last.

Q. by same. Did not the bills of the Kennebec Bank generally pass at par in the town of Hallowell, about the twelfth of December last?

A. I think they did.

Q. by J. A. Were you not a borrower of money at the Kennebec Bank, or interested in the stock of it?

A. I owned at that time fifteen shares in the Kennebec Bank; since then I have sold out. I did not owe any thing to the Bank myself, but the company of Morse & White did.

John S. Kimball [Merchant of Augusta] who after being sworn, was examined on the part of the defendant, and answered as follows:

Q. by defendant. Did not the bills of the Kennebec Bank generally pass at par in the town of Augusta about the twelfth of December last?

A. They did.

Q. by defendant. Which should you have preferred about the twelfth of December last, Kennebec or Worcester bills?

A. I should have preferred Kennebec.

Major Samuel Howard [Sheriff of the County of Kennebec] after being sworn, was here examined on the part of the Defendant, and answered as follows:

Q. by defendant. Did not the bills of the Kennebec Bank generally pass at par in the town of Augusta, about the twelfth of December last?

A. So far as my knowledge extends, they did; I always received them myself in my business, and passed them away at the stores.

Q. by J. A. If you had had an Execution against any one, should you have taken the Kennebec bills without the consent of the creditor in discharge of the same, about the twelfth of December last?

A. I should not have hesitated to take the bills in discharge of an Execution in favor of a man in this town, without his consent; but if the execution had been in favor of a man at the westward, I should not have taken them without consent.

Major Jesse Robinson, [Cashier of the Kennebec Bank] after being sworn, was here examined on the part of the Defendant, and answered as follows:

Q. by defendant. What time did the Kennebec Bank stop payment of specie?

A. The seventeenth of November last.

Q. by same. Do you know that Capt. Eastman went to the westward before the Bank stopped payment of specie, and did not return till some time afterwards?

A. Capt. Eastman set away for the westward about the tenth of November last, and returned as near as I can recollect, about the sixth of December last.

Q. by same. Did not Capt. Eastman, after he returned from Boston, and previous to the twelfth of December aforesaid, state to you that he had a quantity of Kennebec bills, and that if there were any difficulty about his Company's taking them, request you to give other bills; and did you not agree to give other bills in exchange, if any member of his Company refused to receive Kennebec bills?

A. Capt. Eastman did call previous to the twelfth of December, and informed me he had a quantity of Kennebec bills, and I did tell him, if there were any difficulty, I would give him other bills in exchange.

Q. by same. Were there funds in the vault of the Kennebec Bank, which would have enabled you at that time to have exchanged in specie and other bills, to the amount of seven thousand dollars?

A. On the ninth of December, we had in the vault of the Kennebec Bank, specie some more than five thousand dollars, and other bills to the amount of about five thousand.

Q. by J. A. Had not the Bank been sued previous to that time?

A. The Bank was sued about the first of November, some time previous to the Bank's having suspended payment of specie; the reason of the Bank's being sued, was not because the Bank was unwilling to redeem their bills, but on account of some altercation between me and the holder of the bills. The Bank afterwards offered the specie.

Q. by same. Should you have paid the specie for bills, which might have been brought to the Bank for redemption by any one at the time you agreed to assist Capt. Eastman, in case of difficulty?

A. I should not.

Q. by defendant. Had not Mr. Emmons [the Judge Advocate] the deposit of a considerable amount at that time in the Bank?

A. He had.

Thomas W. Smith, [Merchant of Augusta] after being sworn, was here examined on the part of the Commonwealth, and answered as follows:

Q. by J. A. Did Mr. G. Reed, Jun. bring you bills of the Kennebec Bank in payment of a debt, which he stated, he received of Capt. Eastman, in payment for his services; and did you at first decline to take them?

A. Mr. Reed was owing me a small sum, and I either asked him for it, or he told me that he was going to receive his pay of Capt. Eastman the next week, and then he would call and pay me. Accordingly he called about the time he stated; and when he offered me the money it was Kennebec. I told him I expected to receive current money, the troops were paid in current money, and I expected to receive it of him. He told me he received Kennebec money, and that those who received specie, had to allow a premium. I then took the money, hesitating at first, as it was not current money, and as I expected that.

Joseph Carlton, after being sworn, was examined here, on the part of the Commonwealth, and answered as follows:

Q. by J. A. Did you hear Capt. Thomas Eastman say when he put up at Mr. Dillingham's, that Otis Getchell was his waiter?

A. I happened last fall to be down at Augusta, and saw Capt. Eastman at Mr. Dillingham's, when he put up there; and after conversing with him respecting the conduct of the Selectmen of Winthrop, and telling him that I would do any errand he wished, if in my power; he observed that he was going to Wiscasset, and told a young man, whom he called Getchell, to get up his horse and brush him down directly. The young man took off his uniform and put on a short jacket. I then said to Capt. Eastman, you have a waiter about these times then do you? He said he did. He did not say Getchell was his waiter.

Parsons Smith was here examined on the part of the Commonwealth, and answered as follows:

Q. by J. A. Do you know that Otis Getchell went to Wiscasset as a servant, with Capt. Eastman last fall, when said Eastman was on duty?

A. He started from Augusta with Capt. Eastman, and I saw Getchell at Hallowell; Capt. Eastman told me before he went away, he himself was going to Wiscasset.

Q. by same. Did you call upon Otis Getchell to do duty, and he did not do it?

A. I was ordered out one day to exercise the Company, and I called for Getchell, and he was not to be had.

Q. by same. Do you know that Getchell scoured Capt. Eastman's sword for him?

A. I do.

Q. by defendant. Were you knowing to Getchell's doing duty frequently with the Company, while at Augusta, and was he sent to the eastward on duty and absent some time?

A. I know nothing, but that he did duty with the Company till Capt. Eastman was sick; and after Capt. Eastman recovered I had leave of absence; when I returned Getchell was there. I do not know that the Company did any duty after that. About ten or twelve days before we were discharged, Capt. Eastman went to the eastward and took Getchell with him, and left him at some post.

It being suggested, that the evidence both on the part of the Commonwealth, and of the defendant, was now finished, the President directed the Marshal to adjourn this Court to meet again at this place, at ten o'clock, A. M. to-morrow, which he did in due form.

Dillingham's Tavern, Saturday Morning, 10 o'clock, A. M.

The Court met pursuant to adjournment. The President and Members were called and answered in their proper places. The parties were called and answered in their proper persons. The President now directed the Marshal to open the Court, which he did, in due form. The Judge Advocate read the minutes of yesterday.

The Judge Advocate now called upon the Defendant to exhibit his defence, if any he had—when he offered the following:—

DEFENCE.

Mr. President, and Gentlemen of the Court,

IF I did not possess a consciousness of having endeavored to discharge my duty since I have been honored with a Commission under the Commonwealth, I should appear before you at this time with a degree of reluctance. But confident of the correctness of my intentions, I have cheerfully obeyed the summons to appear before you, and have not shrunk from an investigation of the crimes laid to my charge—crimes, which, if true, take from me honor and reputation, and expose me to the merited contempt of the public.

I consider it, gentlemen, peculiarly fortunate, that the examination of the several charges exhibited against me, has been committed to a Court so well qualified to decide on the nature of the charges, and to apply with correctness the evidence in the trial.—The evidence has at length closed and is now before you.—In comparing and applying it, I ask not favor, but I expect justice.—“Nothing extenuate, nor set down aught in malice.” For weeks past my enemies have been basely employed. Malice and envy with their “hundred tongues,” have been industriously at work.—Reports injurious to my reputation as an Officer have been circula-

ted in all directions by those who seemed bent on my destruction ; and some, perhaps, fancied themselves already in possession of the command of their immolated victim.—These reports so wantonly spread abroad, I heeded not—“They pass’d by me as the idle wind.”—But, Gentlemen, the multitude of crimes for which I was to have been prosecuted, and which were to “overwhelm me like a whirlwind”—the mountain of iniquity, under the weight of which I was to have been crushed to the ground, has at length been so much reduced in compass, that I trust I shall be able to stand under its pressure.

It is, Gentlemen, both my privilege and duty to make such observations relative to the charges set forth in the complaint and the evidence produced, as may arise on a cursory view of the testimony.

I will now, Gentlemen, call your attention for a moment to the first specification of charge which alleges, that on the twenty sixth day of November last, I made and exhibited to the Board of War within and for the State of Massachusetts, a certain false and fraudulent pay roll of my Company, wherein and whereby I charged the said State with the wages, rations and clothing of one Thomas Eastman, Jun. who, (as said specification alleges,) I falsely and dishonorably represented to said Board of War was a servant to me, for and during the term of fifty seven days, &c.—These are charges Gentlemen, of a serious nature, and if supported by the Government, will attach hereafter, to my name, infamy and disgrace. It charges me with defrauding the Government I have endeavored faithfully to serve, and of forfeiting the word and honor of a Soldier, by certifying I had employed a servant when I had none ; and all this, it would seem, for the paltry sum of less than thirty dollars.—Can it be possible, Gentlemen, that a man in the right exercise of his reason, a man who regarded the good opinion of his fellow citizens, a man who had the “oath of God upon him,” should deliberately and *intentionally*, commit a crime of this magnitude ! How far this charge has been supported by the Government, is now for you to decide. I presume the Government will not contend, that, the person alleged to have been employed by me as a servant, was not, at least part of the time, personally with me and acting in said capacity. Every witness produced by them has attested to this fact. Every witness on this point has told you, that Thomas Eastman, Jun. was frequently at my quarters, brought me clothes, &c. But Gentlemen, failing to support this charge by any direct evidence, the Government have attempted to shew, that I had, some part of the time, one of my soldiers with me who acted in the capacity of a servant. How far they have succeeded in this attempt, you will determine. I do not deny, that Otis Getchell, one of the soldiers, was occasionally with me, particularly two or three days during my illness—but he was never considered by me as a servant. He did duty as a soldier and was at one time absent on a tour of duty about ten days. It was also in evidence, that Mr. Paine, one of the

witnesses on the part of Government, generally took care of my horse; and that he did this, not in consequence of any request of mine, but "of his own free will"—these are the words of the witness. Had I been permitted by the Court, I could have produced abundant evidence to shew, that for all services rendered me by Getchell, he received from me ample compensation. The Court I think must be satisfied as to this, by recurring to the testimony of Lieut. Norris, who stated, that I expressly told him not to employ any of the soldiers to do errands without paying them for what they did.

It could scarcely have been thought necessary (after hearing the evidence for the Government) for me to attempt to disprove, what they wholly failed in proving, but that doubts might be removed, should any remain on the minds of the Court, I introduced by their permission, Thomas Eastman, Jun. by whose testimony it appears, when I was ordered on duty last fall, I expressly directed him to be *at all times* in readiness to attend me, telling him if I should be ordered from Augusta he would accompany me. He also states that while I remained on duty at Augusta, he was frequently employed in carrying things from Augusta to Winthrop, and from Winthrop to Augusta, and that a horse was particularly provided by me for him, and that he the said Thomas, was not in the employ of any other person during my continuance at Augusta, and that he considered himself my servant. He also states that he was seven or eight times at Augusta, that he came in the morning and returned at night, and that at one time he stayed three days, waited upon me, got up my horse, &c. His brothers also occasionally brought me things. The testimony of this witness is corroborated, in almost every particular, by that of Lieut. Norris. It would have been supposed that after this positive proof of my having regularly employed a servant, that the Government would have rested satisfied.—But no, Gentlemen, there was a ray of hope yet remained—there was one more straw that must be seized. After it was supposed that all the evidence, both for and against me had been examined, it was whispered in the ear of the Judge Advocate, that a Mr Joseph Carlton was acquainted with some facts highly necessary for the Government to be in possession of. This important witness was introduced, and sworn, and interrogated, and after a long preamble, and after the Judge Advocate had written over somewhat less than a half of a sheet of paper with his answer, and we were all of us expecting something of great consequence, this witness tells you—what?—why that I told him that I employed a servant.—This shews, Gentlemen, to what a pitiable shift the Government were reduced to support this charge. They probably will contend that a servant is at *all times* to be with his master—that he is not to go out of his sight.—Sensible that this must be their last resort, I requested that Major Chandler might be sworn; who informed the Court that he had been an Officer in the United States' service, that

he did not, while in the service, consider it necessary to have his servant at *all times* with him—if his servant was with his family, it was sufficient. He also informed you that the servants of Officers were frequently employed about other business than waiting upon them. It was in my power, Gentlemen, to have produced abundant evidence of this kind, but I thought it would be trespassing too much on your nearly exhausted patience. It would have been attempting to elucidate a point already clear—to convince you, when, perhaps, you had never doubted.

It may, perhaps, be proper in this place to take some notice of that part of the first specification, which charges me with a design to defraud the Government. Here, I would observe, that while on duty last fall at Augusta, I was considered as commanding a separate post. The whole trouble of finding quarters for my Company, contracting for their board, procuring forage for horses, stationing Videttes at different posts, relieving them, receiving all orders relative to the Troop, communicating such orders as I received to the Major General, devolved wholly on me. As commandant of a separate post, I was entitled, by the laws of the United States to double rations for myself. Yet, Gentlemen, notwithstanding the Government would wish to make you believe, that I was disposed to defraud them, you will I think be satisfied that in this instance, I did not ask or receive from them what I was justly entitled to—I asked of them and received from them, nothing for the extra trouble I was at—nothing for the extra duty I performed. Does this look like defrauding the Government? Does this look like an inclination to filch them of the paltry sum of twenty nine dollars, when I was legally entitled to receive more than that amount, for which I charged them nothing?

I will now call the attention of the Court to the second specification of charge, wherein the Complainant alleges, that on the twenty sixth day of November last, I made and exhibited to the Board of War, a false and fraudulent pay roll of my Company, wherein I charged the State with the wages, rations, and clothing of one Samuel Thwing, who, (as said specification alleges) I falsely and dishonorably represented to the Board of War, was a servant of Lieut. Francis Norris, for and during the term of thirty days, while he the said Norris was on duty, &c. and that I received of the Board of War the sum of fourteen dollars and fifty cents for the wages, rations and clothing of the said Thwing, when (as said specification states) I was well knowing that said Thwing was not employed as a servant to said Norris.

As to this specification, it cannot be considered necessary to detain the Court long by a recapitulation of the evidence. The witnesses examined by the Government did not pretend to say that Thwing was not employed by Lieut. Norris as a servant—they knew nothing of the fact—and how should they know? Was it the duty of Lieut. Norris to notify the members of the Company, who he em-

ployed as a servant? Was it for him to publish to the world that he employed Thwing as a servant, before he could be entitled to receive his wages? I should presume not. But what is the testimony of Lieut. Norris? He tells you that he actually employed Thwing as a servant thirty days—that he paid the father for his son's services, six dollars and twenty five cents, and produced his receipt therefor; and gave you as a reason for paying him no more, that he (the witness) frequently employed his own son and others to do errands for him; and that Mr. Thwing was perfectly satisfied with what he received. If he was satisfied, why should the Government complain? Lieut. Norris also says I paid over to him the money I received of the Board of War, which included the pay, rations and clothing charged for said Thwing as a servant. I also produced to the Court said Norris's receipt for the same, dated ninth day of December last.—If Lieut. Norris stated to me that he employed a servant, it was my duty to return one on the pay roll. I was not to run about the streets to inquire into the fact.—If he stated to me an untruth, let the Government call him to an account—I gained nothing by returning a servant for him on the pay roll. However disposed *I may be to defraud* the Government on my *own* account, I think I should feel no inclination to do it for the benefit of *others*.

The third specification of charge, Gentlemen, I pass over without any observations, as the Government have produced no evidence to support it.

I now come to the fourth and last specification. Here has been the bold stand of the Government. This seems to be the last grand scene in this *Military Drama*—The actors have here exerted their most powerful talents. This specification alleges that on the twelfth day of December last, I did fraudulently and dishonorably pay to members of my Company, their portion of the money which I received of the Paymaster of the Board of War, belonging to them as aforesaid, in specie at a discount of one and an half per cent. or in the uncurrent and depreciated bills of certain eastern Banks, thereby defrauding the members of the Company of a certain part of the amount of their demand against the State for their services as aforesaid, &c.

To this charge, Gentlemen, when called upon to answer, I put in a plea wherein I contended that I was not amenable to a military tribunal, for the charges alleged against me in said fourth specification. I did not plead this, because I was unwilling the charge should be fully investigated, but because I thought, if the Court should consider the plea good, they would be saved much time and trouble.

I am accused in this charge, of not paying over to the members of my company, the *same money*, I received for them of the Paymaster.—And by whom is this charge brought against me? Who is it that instigates the government to prosecute me for this pretended misfeasance? Is it one who pretends he is injured by the transac-

tion? Is it one who received or was entitled to receive any part of the money? Certainly not. What then was the motive of the Complainant? Does he expect by my fall to rise himself? In charity I would hope that no such base, unmanly motive influenced his conduct—I would hope his motives were pure and disinterested, such as his God and his own conscience will approve. But, Gentlemen, I leave the Complainant to his own reflection, and proceed to make a few observations on the nature of the evidence relative to this charge.—And first, Gentlemen, the fact of my exchanging the money on which the Government apparently seem to lay so much stress, is a fact I never denied. The witnesses for the prosecution abundantly shew it, and I am willing it should have its full force.—It has been attempted by the Government to prove that at this place, about the twelfth of December last, the bills of the Kennebec Bank were not as good and as current *here*, as the bills of the Worcester Bank. I do not recollect but one or two witnesses who testified they considered the Worcester bills the best; on the contrary a host, of as respectable witnesses as could be produced in Court, testified that bills of the Kennebec Bank were more current *here* than bills of the Worcester Bank, and some of the witnesses went so far as to say they would have given five per cent. more for Kennebec bills. But Gentlemen, I consider this has little to do with the point—the only question I conceive to be, has the Company under my command been defrauded and cheated by me? If they have, I deserve to suffer, and I ask no mercy—If they have, it is your duty to say I am guilty, and let the vengeance of law fall upon me. But how Gentlemen, is it to be proved that I have defrauded my Company;—how but by the men alleged to be defrauded?—They tell you they were perfectly satisfied;—they tell you *one and all* of them, that if the choice had been offered them they should have preferred Kennebec to Worcester bills—and yet one solitary man, the Complainant, a man who received none of the money, comes forward, and in his complaint tells you, the members of my Company have been defrauded, and if they will not assert their *own* rights, *he* will avenge their wrongs and redress their grievances.

Let us for a moment, look to the facts as they appeared in evidence.—By the testimony of Maj. Robinson, you are informed that when I left Winthrop for the westward, the Kennebec Bank paid specie for their bills—that they continued paying specie for more than a week afterwards. Had the news of the Bank's refusing specie for their bills reached Boston, I had no opportunity of knowing it, I was some distance from Boston, in the country—there is no probability that the news would have reached me. The Government have not attempted to prove that I was acquainted with the fact.—But it also further appeared in evidence, that after I returned from the westward, and found the Kennebec Bank had refused the payment of specie for their bills; feeling anxious that the Company should not be dissatisfied, I applied to Maj. Robinson, the Cashier

of the Kennebec Bank, and requested him, if any of the Company declined taking Kennebec bills, to exchange them, and give them specie, or such bills as would satisfy them. This he agreed to do ; and he testifies to you that there was specie in the vaults of the Bank to the amount of more than five thousand dollars, which would have enabled him to have fulfilled his agreement. By this arrangement, you will perceive that I had no design to defraud or injure the Company. It was also proved to you by numerous witnesses, that I stated to the Company the reason for my exchanging the bills I received of the Board of War and taking Kennebec bills—It was because I thought Kennebec bills would be more acceptable to them, and because the bills I received were principally twenty dollar bills. In this I did not mistake—the members of the Company tell you they did prefer the Kennebec bills ; of course, instead of *injuring* them by the exchange, they were *benefited* ; I have obliged them by what I did. And what was my compensation for my services ? Did I charge the Company any thing for my trouble in receiving and paying over the money to them ? They expressly tell you I did not. Yet I must be at the trouble and expense of defending my character against the charge of fraud. As to that part of the charge relative to my paying the Company one half in specie, at one and an half per cent. discount, little need be said. They were under no necessity of taking it at that. I did not wish them to take it. They tell you I offered to pay them the whole amount in bills, and they *repeatedly* told you that they considered the bills I offered better than those I received for them. They tell you one and all of them that they were perfectly satisfied at the time, and that they are still satisfied—and every merchant in this vicinity, acquainted with the value of specie, will tell you, that at the time I paid my Company, specie was worth two or three per cent. more than Worcester bills. To prove this fact, I could have produced more than fifty witnesses ; but I considered it unnecessary to detain the Court with the examination of witnesses on so frivolous a charge.

The intention of the person doing an act constitutes its criminality ; and to complete the act, it is necessary that either the public or some individual should be injured. It has *not* been proved, and it *cannot* be said with truth, that either the public or any individual in the community have suffered in this transaction.

I have now, Gentlemen, closed my observations on the evidence in the trial. If I have wantonly violated the laws of our country, I refuse not to suffer. If I have committed either of the crimes alleged against me, let the curses of the law fall upon my head. But you will recollect that our laws require proof of the most positive kind to convict the accused. The laws of our country guard with care the life, property and reputation of its citizens. If there is a vestige of doubt as to the guilt of the accused, the law requires an acquittal.

The accused, however innocent of crimes laid to his charge—whatever confidence he may possess in the integrity, uprightness

and impartiality of his Judges, cannot but look with anxious solicitude to the result of his trial.

To SOLDIERS, the laws have wisely entrusted the SOLDIER'S HONOR to be kept inviolate, until by the commission of some wilful crime it becomes forfeit to justice. You have now, Gentlemen, the invaluable deposit, a SOLDIER'S HONOR, in your hands. My honor, my reputation, is now at your disposal. It is now for you to say, whether I have forfeited all title to the respect and confidence of Officers and Soldiers—whether I have openly and wantonly violated the laws of our common country, and have thereby sacrificed my character as an officer; or whether I am still to retain, what has ever been, and I trust ever will be, my pride and boast—the name of a SOLDIER. Honor is the SOLDIER'S breast-plate—take from him that, and you deprive him of what he *ought* to hold dearer than life itself.

Permit me, Gentlemen of the Court, to assure you that I feel the most perfect confidence in your integrity and impartiality. You possess the feelings of Soldiers, and will not, I trust, trifle with those of a fellow Officer. I am confident rashness will not mark your deliberations, or prejudice bias your judgment—You will consider that to me your decision is all important—It involves not the loss of property—it involves not the loss of life;—but it does involve what is infinitely dearer to the Soldier than either—Reputation and Honor. I know you too well to believe that party views or party feelings will have any influence in your deliberations.

Whatever, Gentlemen, may be the final result, I trust, as to the charges before you I shall never be troubled by an “accusing conscience.” I shall ever possess the proud satisfaction that I have not intentionally done any thing derogatory to the character of the Soldier or Citizen.

THOS. EASTMAN.

Augusta, March 18, 1815.

After this was read to the Court, the Judge Advocate stated the evidence both for the Commonwealth and the accused, and made comments upon the same.

The President then directed the Marshal to adjourn the Court, to meet again at this place at a quarter past two, which he did accordingly.

Quarter past 2, P. M.

The Court met pursuant to adjournment. The President and Members of the Court were called and answered in their proper places. The parties were called and answered in their proper persons. The President directed the Marshal to open the Court, which he did in due form. The President directed the Marshal to clear the room. The Court then proceeded to determine upon the several specifications of charge.

The question was then put by the Judge Advocate as to the first specification of charge in the following form, to wit :

From the evidence which has been adduced both on the part of the Commonwealth and on the part of the accused, and the defence by him offered, are you of opinion, that the Defendant is guilty or not guilty of the first specification of charge, exhibited against him in the complaint of Lieut. William Winslow ?

On the first specification of charge exhibited against the Defendant in the complaint of Lieut. William Winslow, the Court were of opinion that the Defendant thereof was not guilty.

The question was put in the same form as to the second specification of charge.

On the second specification of charge exhibited against the Defendant in the complaint of Lieut. William Winslow, the Court were of opinion that the Defendant thereof was not guilty.

The question was put in the same form as to the third specification of charge.

On the third specification of charge exhibited against the Defendant in the complaint of Lieut. William Winslow, the Court were *unanimously* of opinion that the Defendant thereof was not guilty.

The question was put in the same form as to the fourth specification of charge.

On the fourth specification of charge exhibited against the Defendant in the complaint of Lieut. William Winslow, the Court were *unanimously* of opinion that the Defendant thereof was not guilty.

We hereby certify that the preceding is a correct record of the evidence, proceedings and judgment of the Division Court Martial, held at Augusta, the 14th of March, A. D. 1815.

(Signed) JAMES WAUGH, JUN. Lt. Col. Com.
President.

WILLIAMS EMMONS, J. A. 8th Div. M. M.

Augusta, March 22, 1815.

DIVISION ORDERS,

DISAPPROVING THE JUDGMENT OF THE COURT.

EIGHTH DIVISION, *Augusta, March 27, 1815.*

AT a Division Court Martial begun and held at Augusta on the 14th instant, constituted as follows, viz.

Lieutenant-Colonel-Commandant JAMES WAUGH, JUN. 2d Reg. 2d Brig. PRESIDENT.

MEMBERS.

- Maj. NATHAN STANLEY, 3d Reg. Inf. 2d Brig.
JOHN HEATH, 3d Reg. Inf. 1st Brig.
- Capt. JONAS PARLIN, Bat. Cav. 2d Brig.
RICHARD SMITH, 1st Reg. Inf. 2d Brig.
JOHN TRASK, 5th Reg. Inf. 1st Brig.
JACOB DAVIS, 1st Reg. Inf. 1st Brig.
LEVI BARRETT, 1st Reg. Inf. 2d Brig.
- Lieut. THOMAS B. COOLIDGE, 1st Reg. Inf. 1st Brig.
OLIVER RICHARDSON, 1st Reg. Inf. 2d Brig.
OLIVER SEWALL, 5th Reg. Inf. 1st Brig.
JOHN PAGE, 1st Reg. Inf. 2d Brig.
SAMUEL WEBB, 1st. Reg. Inf. 2d Brig.

Major WILLIAMS EMMONS, Judge Advocate,

Adjutant JESSE JEWETT, Bat. Cavalry, 1st. Brig. Marshal.

was tried Capt. THOMAS EASTMAN, commanding a company in the Battalion of Cavalry in the 1st Brigade of the Division, upon the following specifications of charge, exhibited against him by Lieut. Winslow of the same Battalion, viz. [*Here follows the charges as before given.*]

Capt. Eastman appears, and to the *first* and *second* of these specifications of charge, voluntarily pleads not guilty; to the *third* he objects, that from the nature of it he is not holden to answer; but the Court ruling that he is holden, he then pleads not guilty to the *third* and *fourth* specifications.

The Court, after a full hearing of the cause, have made up their opinion, that of each and every of the foregoing specifications of charge, the said Capt. Eastman is not guilty.

Upon a careful and attentive perusal of the whole proceedings, and particularly the evidence exhibited, as well in behalf of the accused officer as of the Commonwealth, the Major-General, while he is disposed to approve the opinion of the Court in relation to the *third* specification (there appearing no proof to support it) feels

himself constrained by obligations of duty to disapprove their opinion as it respects the *first*, *second* and *fourth* specifications; because it evidently appears on the face of the proceedings, that this opinion respecting each of these, is against evidence, and as it respects the two first, is against both evidence and law.

In relation to the *first* and *second* specifications. Both these appear to be well established by the concurring testimony of several credible witnesses introduced in behalf of the Government. But the evidence adduced by the Defendant in support of the opposite fact, that the servants therein mentioned, were *actually employed and kept in service*, is weak and uncertain in itself, and comes in one instance from the nominal servant himself, and in the other from the Lieutenant to whom the other fictitious servant was assigned: And the peculiar and delicate circumstances in which these witnesses stood before the Court, required their testimony to be received with great caution and considerable deduction on the score of credibility. It never could be the intention of the law authorizing the allowance of waiters to officers in actual service, that it should be a mere *sinecure*. It was doubtless intended to relieve the officer from the incumbrance of those necessary menial services, the performance of which would not only be derogatory to his station, but prevent him from rendering the Government his whole personal service. The language of the law on this subject, is peremptory and emphatical, and too explicit to be misunderstood.—“An officer claiming allowance for a servant, must certify, that he *actually employed and kept in service* the waiter charged, and that he *did not, during the term so charged, keep or employ as a waiter or servant, any soldier* of the line of the army.”—With this law, and this proof of the breach of it, before them, it is difficult to conceive how the Court could acquit the defendant on these specifications.

With respect to the *fourth* specification. The certificate of the Paymaster of the Board of War is proof of the kind of money Capt. Eastman received for his company; that he did exchange this current money for specie at a discount, and for bills of certain eastern Banks, is proved by his own witnesses and acknowledged by himself; that the bills of the eastern Banks with which he made payment to his company were *uncurrent*, is too notorious to require proof, whatever might be the opinion of certain *individuals* to the contrary. And on this head it might be pertinent to remark, that the *opinion* of a witness in the coloring of facts, is always inadmissible in a Court of Justice, as well as entirely irrelevant in the present case. Whenever a Bank has refused to redeem its own bills, those bills are publicly dishonored, and the character and credit of such Bank is known by the true index of *public opinion*. And if it becomes necessary to establish this general character of a Bank by witnesses, the same rules, it is conceived, should be adopted as for establishing the general character of a man for truth and veracity.—The allegations in this specification therefore, appearing to be proved, it would seem

to appear also, that the Court had no other alternative, than either to say the Defendant was guilty, or to say that the alleged transactions did not constitute a military offence. But the latter, it is conceived, they have virtually admitted, by deciding unanimously on the defendant's first plea to the *third* specification (which is of the same nature of this) that *he was holden to answer thereto in a Military Court*. And if this was in any degree a crime against the Government when committed, it is not easily seen, how any change of opinion or subsequent acknowledgment of individuals, could make it otherwise.

In fine. The defendant having given reasonable cause for the institution of this prosecution, might have spared the illiberal reflections indiscriminately cast upon the complainant and others in the course of his defence. It is very questionable whether such a mode of exculpation can be considered by the judicious of any party, as proof of innocence, or as giving any embellishment to the records of this trial.

The Court Martial is dissolved. Capt. Eastman is discharged from arrest.

By order of Major-General SEWALL,
EBEN DUTCH, A. D. C.
and Orderly Officer.

ADDRESS TO THE PUBLIC.

FELLOW CITIZENS—

I SHOULD have considered my reputation wrested from the fangs of calumny when I had been tried by a Court Martial and honorably acquitted of all the charges against me, as well by the Court, as by those who heard the trial; but the vengeance of my enemies is insatiable:—An aspersion is attempted to be cast on my character, in a manner which leaves me no alternative but an appeal to my fellow citizens. And in this, my reliance is on the “*face of the proceedings*” of my trial.

It is also due to the *injured honor* of the Members of the Court Martial, as well as to that of the witnesses, that the whole proceedings of the trial should be published to the world.

By the Division Order of the 27th March, the Court Martial is charged with deciding “*against both evidence and law* ;” and if so I must stand guilty of the charges, and the Court must appear in a situation which delicacy would forbid my describing. But with a consciousness of the rectitude of my conduct, and the firmest confidence of the justice and honor of the Court who tried me, I have procured the proceedings in order to submit them to the inspection of the public, with such remarks only as appear necessary to explain the case. And I shall find the less to observe in this address, as I have in my defence before the Court, sufficiently recapitulated the evidence, and expressed my conviction of the malignity of the prosecution, which is by no means lessened by the ground taken in the said Division Order.

The almost universal sentiment during the progress and at the close of the trial (so far from a suspicion that I should or ought to be convicted on either of the charges) was, that it was a groundless, vexatious and malignant prosecution. Judge, then, of my surprise and mortification at the contents of the Order promulgating the decision of the Court! But in my surprise and mortification I had not the least consciousness of dishonor, or the least idea of submission to injustice! I knew I had a shield in the bosom of my country! I knew that truth and innocence must and would prevail over the malignity and artifice of my enemies. A legal tribunal acquitted me with honor; but my enemies pursue me, and to you it is left to decide whether dishonor shall attach to me, or whether it shall recoil upon those who have over-stepped the hallowed pales, and violated the sanctuary of justice.

Immediately on receipt of the said Division Order, I applied to the Major General for a copy of the proceedings; but I was refused it. After several solicitations, however, and stating that *I would have a copy*, if I had to go to Head Quarters for it, I at length obtained the copy.

And now, my fellow citizens, I ask no commiseration—I ask no favor nor forgiveness if I am guilty; but I do ask of you that *justice*

which is due to an individual who appeals to you with all the proceedings and all the circumstances of his case.

Respecting the first specification, I conceive that you can have no possible doubt of my innocence ; but that I did evidently wrong myself in my punctiliously seeking to perform not only my duty, but *more than my duty*, without asking *so much* as the compensation and emoluments to which I was clearly entitled. I did to all intents, and in every sense of the word, command a separate post.—Gentlemen well versed in the duty of actual service assure me that every place where a separate guard is mounted, constitutes a separate post. Did I not mount a separate guard ? I did, and that guard consisted of half of my company. And what was the extent of the line of my sentinels ? From Augusta to Dresden, from Augusta to Handen, and from Augusta to Belfast. And such was my zeal to do every thing in my power, and such my contempt of fatigue, that in addition to the duty of Commanding Officer, I did myself in some instances, perform the duty of officer of the guard ; and I did once in particular post the sentinels myself on a considerable part of this line of about seventy miles in extent ; and so pitiful are the shifts of my enemies in endeavoring to injure me, that they attempt to turn these extra services to my prejudice ; to make it appear when I took the sentries to post them, or to relieve them, that they were my servants. Nor were these extra personal services all the inconveniences attendant on the command of a separate post. So tardy were the supplies of government, or their agents, that I was compelled to make very considerable pecuniary advances to my Company, or the service must have suffered. And although of no very great importance, except as displaying the character of the man, the extent of whose liberality and gratitude may be very easily inferred from the records of this trial, it can be said, that this same Lieut. William Winslow, whose volunteer services as my accuser, has taxed the Commonwealth with so handsome a sum in this vexatious prosecution, received, from my hand, money to defray his expenses the whole time he was on duty ; of which \$7 : 50, is all that has ever been refunded. Although thus subject to the duties and inconveniences of a Commanding Officer of a separate post, and in that capacity entitled to double rations, which would have amounted to the additional sum of \$34 : 20, I neither received nor demanded this additional sum of the Government. I mention not these facts as boasting of my services or integrity, but that the public by comparing the different parts of my conduct, may judge whether this looks like the disposition of a man who wished to make money out of the service, or to defraud his Company or the Government of a few dollars.

The second specification charges me with returning a servant for Lieut. Norris, well knowing that he did not employ one. This is a bold assertion, entirely destitute of proof, as it is without foundation in truth. If Norris intended to impose on me or on the Government, why did he not request him made up for the whole time ?

Why, undoubtedly, because during the first part of the time that he was out, he saved the Government the expense, by not employing a servant; that afterwards he found it necessary to have one; he employs Thwing, he returns him to me, and it was my duty to make him up in the pay roll. As corroborating his testimony, Norris produced the receipt of the father of said Thwing in full for the service, the amount of which is \$6 : 25. A shuffling is here made, because Norris did not pay so much as he received of the Government. Suppose he paid him but *one dollar*, or but half of it; was he the less his servant? What business was it to me how much he gave his servant? How many gentlemen have servants for their living, and pay them nothing more?—Is this any reason why they are not to be considered servants? I had said Thwing and his father both in Court, ready to testify; but deeming the evidence already sufficient, I did not call either of them; but I notified the Government that they were in Court, and they could ask them any questions if they saw fit. This receipt, although intended to be considered a part of the evidence, was not returned, nor mentioned in the return of the proceedings. I had no suspicion but it would be preserved and reported as much as any part of the evidence; but the Judge Advocate stated to me, when I found it was left out, that the reason was because “he did not think it material;” but *I thought it material*, as it was a voucher proving the transaction to be genuine beyond all doubt.

Passing over that charge, respecting which there is such amazing condescension, as to be “*disposed to approve the opinion of the Court, there appearing no proof to support it,*” (amazing candor!) we come to the charge of defrauding members of my Company, by paying them in specie, at one and an half per cent. discount; or in the uncurrent and depreciated bills of certain eastern Banks. When I left home, at the desire of my Company, to receive their pay in Boston, all the eastern Banks were good; they all paid specie, nor did I know to the contrary till I returned; and then they passed at par in all the ordinary transactions in this country; and it is well known that meetings of the merchants and others were held in Wiscasset, Bath, Hallowell, and Augusta, in all which it was agreed that the bills of those Banks should be received, circulated and considered current in their business; and so they were realized by my Company, all of whom testify that they were satisfied at the time; that the bills answered their purposes at par, that none of them passed them at any discount. And further, when my Company found that I was complained of on account of this transaction, every individual of them, except two who were out of the country, voluntarily came forward, and gave certificates of which the following is a copy:—

“ We the undersigned, members of Capt. Thomas Eastman’s
 “ Company of Cavalry, in the 1st Brigade, 8th Division of Massa-
 “ chusetts Militia, having been informed that complaint has been
 “ made against said Capt. Eastman for defrauding his Company,

“ in receiving and paying over the money due for services in Sept. and Oct. last, have thought proper to take this method to make known to all whom it may concern, that we are fully satisfied with the money which we received of said Capt. Eastman, and with the manner of his doing the business in every respect.

“ March, 1815.”

But it is said—If the transaction was, in any degree criminal, no acknowledgment afterwards could make it otherwise. Very well; but all these acknowledgments and all the testimony, respecting the impressions at the time of the transaction, do prove, that there was no criminality *at any time*. The charge is, that I defrauded numbers of my Company—my Company say they were *not* defrauded.

Great stress has been put on the circumstance of my stating that I thought a part of the money I received was Northampton: the reason of that was, that not being acquainted with the Banks in the western part of the State, and as I received of the Board of War a check to be paid in “*foreign bills*,” and not knowing what *foreign bills* they would give me, I took a Broker whom I was acquainted with, into the Bank with me to see the money, and there I negotiated the exchange of a considerable part of it, and he counted the money, so that I did not particularly examine it. It appears the bills were of the Worcester Bank; but I am well informed that these two Banks are on equal ground, that they both do and have continually paid specie, therefore there could be no fraud in this; for I did not state *positively* that they were Northampton, but that I *thought* some of them were. In all the questions to the witnesses respecting their preference of bills, it was, whether they would at the time have preferred Worcester to those they *did* receive.

The great pains taken by the prime movers of this complaint, previous to the institution of it, to prejudice the public mind against me, prove the depth of their malignity. It had been necessary for me to give certificates to the several towns to which the members of my Company belonged, that they had furnished rations during the first part of our service, that the towns might get their pay of the Board of War; but it seems the bill of proscription had been sent on and filed there, for no sooner did they present their accounts with these vouchers, than they were turned over and written on the back, “*Capt. Eastman’s certificate is inadmissible!*” This reverberated back to this country with all the direful forebodings of my impending destruction! My *particular friends*, before they knew any thing of the affair except what they caught in the contaminated breeze, became alarmed for me.

My enemies (if I may use the plural number) appear to be outrageous at their disappointment of the fall of their victim—they must have promised themselves the enjoyment of that savage triumph which their natures appear so well calculated to enjoy at the catastrophe of immolated innocence.

THOMAS EASTMAN.

REMARKS, &c.

A FEW remarks by one, who was present while the evidence was offered in behalf of the Government and the Defendant, it is thought will not be amiss.—Gen. Sewall, in the Division Order of 27th March last declares, that the evidence in favor of the Defendant on the second specification of charge was derived *wholly* from the testimony of the Officer “to whom the fictitious servant was assigned.” *This is not true.* The Defendant did produce in open Court a receipt from the guardian of the servant returned on the pay roll, wherein he acknowledged to have received full compensation for the services of the minor. This receipt, dated in November last (some time previous to this trial being heard of) was handed to the Judge Advocate, and he was informed that the signer was present and ready to answer any questions he was disposed to put to him. He however declined asking any.—Here then was full and complete evidence, that the servant was absolutely employed and paid. The Government did not even attempt to prove that the receipt was not genuine; the Court were of course *obliged* to receive it as such.

But it will be asked, why does not the fact of this receipt's being produced appear on the records of the trial? The inquiry has often been made, but no satisfactory answer has been given. The reply to Capt. Eastman was, that the Judge Advocate did not deem it of importance enough to insert it! The idea of the Judge Advocate omitting to place on the records any part of the evidence, merely because in *his private opinion*, it was of little moment, is too absurd to require further comment.

While considering the second specification of charge, it must occur to every unprejudiced mind, that Capt. Eastman was in no event answerable for said charge. His Lieut. (Norris) certified on his honor, that he absolutely employed a servant for and during the term of thirty days. Was Capt. Eastman to suppose that his Lieut. had told him a falsehood, and run about to collect the proof of it? Certainly not.—In this view of the case, it is clear that it was Norris, and not Eastman, that was answerable.

The Members of the Court, it is conceived, must derive much pleasure from the approbation expressed by Gen. Sewall of their decision, in relation to the third specification of charge. The approval of such an *upright, unprejudiced* judge, and *one so universally beloved*, must be very pleasing.

The fourth charge is, that Capt. Eastman defrauded numbers of his Company. This charge the Government totally failed to prove. Not one solitary person could be found, who had been injured. The Company declared they were satisfied at the time of payment, and remained so. Several of them declared that they thought a compensation due to their Captain for the trouble he had been at.

The spirit in which the investigation was conducted in behalf of the Government, was apparent to the numerous spectators. But in no one instance excited more disgust, than in the questions put to Mr. Hayward, a member of the Company; who having declared that he was perfectly satisfied with the money he received, and that it answered his purpose as well as specie, was asked—why did it answer your purpose as well as specie? The reply was, because it paid my debts without any discount, &c.—It is easily conceived that it must have been mortifying to those who manifested such a determined spirit of hostility towards Capt. Eastman, that the principal witness introduced to establish his guilt in relation to the fourth charge, should have completely exonerated him from all blame whatsoever.

The inquiry has often been made at Head Quarters, as well as in this vicinity, to what cause are the numerous difficulties constantly arising in the Eighth Division to be attributed? Whence is it that the Courts Martial, remonstrances, petitions, resignations, &c. are so very numerous; burthening the State with a heavy annual expense, and tending to excite animosity and ill will among officers and men? An impartial observer, residing in this part of the country, can easily point out the true cause.

Some few persons have endeavored to prove, that Gen. Sewall was not censured by any but his political opponents, and that they alone found fault with his conduct. Many respectable Federalists have for a long time avowed contrary opinions, and recent transactions have proved them to be correct. The names of a number of the persons alluded to can easily be given to the public. Some of them hold respectable military offices.

One fact, tending to prove beyond a doubt the foregoing statement, we shall give to the public.

A highly respectable citizen of the town of Augusta, and a *Federalist*, was within a few days chosen to command the Light Infantry Company of that town. The choice was highly gratifying to the officers in the vicinity, as they well knew the gentleman elected was possessed of such a high degree of liberality and public spirit, that he would place the Company in question on such a footing, as that it would be a great acquisition to the Regiment to which it was attached. But alas, these pleasing prospects were blasted; and we shall make use of the exact words of the gentleman elected, when he stated his reasons to a number of friends, for declining. "I cannot accept any command under Henry Sewall; it would lead to a personal difficulty; *for should he treat me as he has treated others, I should take satisfaction on the spot.*"

In addition to these observations on the trial of Capt. Eastman, and the conduct of General Sewall as commander of the Eighth Division, it becomes, under the head of these remarks, a more particular duty to examine the principles and sentiments of the Division Order of the 27th of March before mentioned. We think there can

be no person of fair and unprejudiced mind, but who, after reading the record of this trial, must be fully and thoroughly convinced that *the author* of that offensive production, viewed the case presented by the facts, through a medium perverted by prejudice, and a disposition *eager* to condemn.

The first assertion made by this famous Division Order is, that the *first* and *second* specifications both "appear to be well established by the concurring testimony of several credible witnesses introduced in behalf of the Government."—Friends of truth, men disinterested in the event of the trial, and who feel responsible to your consciences for the opinion, which you may form of the judgment, which has been solemnly given by a tribunal sworn to decide truly, "without partiality, favor, affection, prejudice, or hope of reward," *read, consider* and *determine*, whether such an assertion can be warranted or justified by the evidence on the *face* of the record, notwithstanding the suppression of matter thought *immaterial* by the recording officer of the Court. So far are these specifications from being proved by the witnesses of the Government, that these witnesses detail many circumstances, that conspire to corroborate the testimony of those adduced to prove the actual employment of waiters. They tell you of seeing young Eastman in situations and under circumstances, which highly corroborated his testimony as to his being a waiter; young Thwing was likewise seen in situations by these witnesses which shew, that he exercised some care over the concerns of his employer: And as to the *negative*, that these persons were *not* employed as waiters; the Government witnesses expressly stated that they did not know but they were thus employed, when asked that question. All that appears by the testimony of the Government witnesses, which was not *favorable* to the Defendant, was that the officers did not see fit to keep their waiters *constantly* employed in attendance upon their persons.

As to the scandalous and vile insinuations against the veracity of the Defendant's witnesses, when no attempt was, or could be pretended to impeach their testimony before the Court, they are too contemptible to merit notice, except as evidence of the disposition, in which they originated. The public will duly appreciate, what weight is to be given to the insinuations of an individual, whose assertions, unsupported by evidence, are not only "to be received with great caution and considerable deduction on the score of credibility," but are, in this case, to be considered as the offspring of a mind, laboring to support by sophistical inference and unwarrantable assertion, what evidence had destroyed and confuted. It is not only insinuated that the witnesses had stated falsehoods, but the Court are accused of having decided against both evidence and law. This is a *compliment* for which the failing party in this prosecution must feel under high obligation. He may console himself with the idea that the case was clear, but the judges corrupt. To determine the justness of this *compliment* the public have the *evidence* before them. As to the law recited by General Sewall in

his Division Order of the 27th of March, it seems to have been a subject of much speculation. Is there such a law, where is it to be found, and if there be, how does it apply to the militia-man of Massachusetts when called out by State authority, are questions worth inquiring after. If there is such a law, it is the constitutional act of a constitutional legislature. If it applies to the militia-man of Massachusetts, called out by State authority, it is an act of the legislature thereof, and will be found in the code of this State. The only law now in force or which ever has been relating to the pay or emoluments of the militia of this State, when in actual service, is a law enacted on the 18th day of Oct. 1814, *not in force* when Capt. Eastman commenced his tour of duty last September. We find in this law no such clause as recited in the Division Order of the 27th of March. General Sewall would have been *guilty of one* act of justice to himself, the parties, the Court and the public, if he had referred to the law, from whence the clause recited in his order, was derived. It cannot be doubted but that, as the fourth specification of charge closes with this phraze, "all which is contrary to the laws of this Commonwealth," &c. the General or some of his right-hand men will, some day or other, unfold this mystery.

As to the observations made with a view to bolster up a disapprobation of the decision of the Court on the *fourth* specification, it may be justly remarked, that they are far fetched, sophistical and deceptive, calculated to impose upon the superficial and unwary. If this specification, it is said, "was in any degree a crime against the Government when committed, it is not easily seen, how any change of opinion or subsequent acknowledgment of individuals, could make it otherwise." Here seems to be some ambiguity, as the word "individuals" may either apply to the Court, the parties, the witnesses, or the persons *alleged* to have been defrauded. If it is applied to the *latter*, as seems most likely, we will say, "it is not easily seen," how any fraud can have been committed, without some person or persons can be found, who have been defrauded; and as to "any change of opinion," &c. it must be shown that an opinion of having been defrauded must have existed before there could have been a change, which does not appear by the testimony of any one.

An attempt is likewise made to prove that the Court were bound to say the Defendant was guilty of this specification, after having decided that "he was holden to answer thereto in a military Court." How is this inference made? What was the substance and amount of the allegations contained in this specification of charge? It was that Capt. Eastman *had defrauded his Company*.— Did the Court then make themselves liable to decide that Capt. Eastman was guilty of fraud, when they decided on the abstract point that an officer ought to be amenable to a military Court for fraud committed in the discharge of duties imposed upon him by his office? Could not the Court decide what offences came within its jurisdiction, without deciding that the offences had been committed?

The plea filed by the Defendant was a plea to the jurisdiction of the Court; the Court decided that the offence alleged came within its jurisdiction. Had not then the Court a right to decide, that the *specific facts proved* did not constitute *fraud*? Suppose an officer should be accused of murder for courageously leading his troops to battle against the enemies of his country. Could not the tribunal which tried the officer decide, that a man might be answerable, under certain circumstances, before a military tribunal, for murder, without deciding that such conduct constituted that crime?

As the opinion of General Sewall, with respect to current and uncurrent money, and the circumstances which constitute those qualities, is of no great moment to the commercial world, and as the *individuals*, who received their pay for their public services of Capt. Eastman, are determined to be their own judges of what currency *they* preferred, it becomes unnecessary to enumerate what circumstances, beside stopping payments in specie for their bills, may affect the credit of Banks. Such however as distance, liability to invasion, to robbery, the facilities of counterfeiting, the responsibility of individuals connected with the institution, may be reckoned among them. If then, Worcester Bank paid specie for their bills, and any one could be assured of future ability to do so, which is generally beyond the knowledge of the holder, and certain eastern Banks had not paid specie; still, owing to local or other causes, the bills of certain eastern Banks might be preferred.

But to close these remarks, we will observe. Was not Eastman voluntarily and legally constituted the lawful agent of such individuals of his Company as had furnished him with written powers to receive their pay and grant discharges therefor? Did not Capt. Eastman, by giving receipts for such sums as he received, make himself liable to his employers for such sums of money, which he had received for their use? Could Capt. Eastman have compelled his Company to receive such money as he was paid in, and thus discharged himself from liability to his employers? Could he not have been made holden to pay them in the legal tender of the country? Whose loss would it have been, had the bills he received depreciated in his hands? If then, there was no deception used, (which is not pretended) how have the Government any right to interfere between the agent and his employers? If they were disposed to receive their pay in scraps of brown paper, and give their agent a release from his liability to them, who has any right to interfere? This is the light in which the public at large view this transaction. And if Capt. Eastman's Company, who received their pay, are satisfied, if the Court Martial have been satisfied, and the public are satisfied, it is thought of little consequence, whether General Sewall is, or is not satisfied.